

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

Return Date: November 21, 2019
Time: 10:00 a.m.

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In re:

Chapter 13
Case No.: 19-45441-608

MARLENE Y COLMER

Debtor(s)

NOTICE OF MOTION

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SIRS / MADAMS

PLEASE TAKE NOTICE, that MICHAEL J. MACCO, Chapter 13 Trustee of the above captioned estate, will move before the Honorable Carla E. Craig, United States Bankruptcy Judge on the 21st day of NOVEMBER, 2019 at 10:00 a.m., at the United States Bankruptcy Court located at 271 Cadman Plaza East – Courtroom 3529, Brooklyn, New York, 11201, for an Order pursuant to 11 U.S.C. §§ 109(g), 521, & 1307(c), dismissing this case with prejudice, prohibiting the debtor(s) from filing another petition under Chapter 13 or converting a Chapter 7 to Chapter 13 for a period of one (1), by reason of the debtor(s)' failure to submit monthly pre-confirmation payments, failure to provide and/or file documents, failure to appear at §341 meeting of creditors, and for such other and further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE, that answering papers, if any, shall be filed with the Court and served upon the undersigned no later than seven (7) days prior to the return date of this motion.

Dated: Islandia, New York
October 28, 2019

Yours, etc.

MICHAEL J. MACCO
Chapter 13 Trustee
2950 Express Drive South, Suite 109
Islandia, NY 11749
(631) 549-7900

To: *Office of the United States Trustee*
MARLENE Y COLMER Debtor(s)
DARREN ARONOW, Esq. Attorney for Debtor(s)
All Interested Parties and Creditors

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

tmm1634

Chapter 13
CaseNo.:19-45441-608

MARLENE Y COLMER

Debtor(s)

APPLICATION

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TO THE HONORABLE CARLA E. CRAIG, UNITED STATES BANKRUPTCY JUDGE:

MICHAEL J. MACCO, Chapter 13 Trustee in the above captioned estate,
respectfully represents as follows:

1. The debtor(s) filed a Chapter 13 petition under the provisions of 11 U.S.C. on, September 11, 2019, and thereafter MICHAEL J. MACCO was duly appointed and has qualified as Trustee.
2. Upon information and belief, this is the fourth petition for relief filed by the debtor(s), under Chapter 13, dating back to November 16, 1994.
3. The first petition was filed by the debtor(s) under case number 1-94-19384-jf, on November 16, 1994. The debtor(s) chapter 7 case was discharged by the court on October 10, 1996. The second petition was filed by the debtor(s) under case number 1-13-45245-608, on August 27, 2013. The debtor(s) chapter 7 case was discharged by the court on January 2, 2014. The third petition was filed by the debtor(s) under case number 1-19-40645-608, on January 31, 2019. The debtor(s) chapter 13 case was dismissed upon the application of the Trustee on June 17, 2019.
4. As of the date of this motion, the debtor(s) has failed to submit any monthly pre-confirmation payments to the Trustee.
5. In addition, as of this date the debtor(s) has failed to file and/or provide to the Trustee, Statement of Financial Affairs; Statement of Current Monthly Income and Means Test; complete set of schedules; copies of pay statements from employer for sixty (60) day period preceding filing, within the fifteen (15) day period required under the Bankruptcy Code.
6. Furthermore, as of this date the debtor has failed to provide the Trustee with copies of previous year's State and Federal Tax Returns; all filings required under Section 521; and all mandatory disclosure documentation as set forth in Local Bankruptcy Rule 2003-1.
7. Moreover, the debtor failed to appear and or be examined the initial §341 meeting of creditors, held on October 16, 2019 at 10:15 a.m.
8. This appears to be nothing more than another filing for the sole purpose of obtaining the rights and benefits of the Automatic Stay, as provided in 11 U.S.C. §362.
9. This is a material default and is prejudicial to the rights of the creditors of the debtor(s).

WHEREFORE, the Trustee requests an Order pursuant to the provisions of 11 U.S.C. §§§ 109(g), 521, & 1307(c), dismissing this case with prejudice, prohibiting the debtor(s) from filing another petition under Chapter 13 or converting a Chapter 7 to Chapter 13 for a period of one (1) year, and for such other and further relief as this Court deems just and proper.

Dated: Islandia, New York
October 28, 2019

/s/ **Michael J. Macco**

Michael J. Macco, Chapter 13 Trustee
2950 Express Drive South, Suite 109
Islandia, NY 11749
(631) 549-7900

SHAMUS MROTZEK, being duly sworn deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Suffolk County, New York.

On October 28, 2019 deponent served the within:

NOTICE OF MOTION AND APPLICATION

upon the following parties, at the addresses designated by said parties for that purpose, by depositing a true copy of same, enclosed in a post-paid, properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York:

Marlene Y Colmer
3 Oceanview Avenue
Staten Island, NY 10312
Debtor(s)

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE
c/o RAS BORISKIN, LLC
Stephani A. Schendlinger, Esq.
900 MERCHANTS CONCOURSE, SUITE 310
WESTBURY, NY 11590

and upon the following parties, by the e-mail address designated by said parties for that purpose;

Office of the United States Trustee
U.S. Federal Office Building
USTP.Region02.BR.TFRTDR@usdoj.gov

Darren Aronow, Esq.
Aronow Law Firm P.C.
Attorney for Debtor(s)
darren@dalawpc.com

/s/ *Shamus Mrotzek*
SHAMUS MROTZEK

Sworn to before me this
28th day of OCTOBER, 2019

/s/ *Janine M. Zarrilli*
NOTARY PUBLIC
Janine M. Zarrilli
Notary Public, State of New York
No. 01ZA5084708
Qualified in Nassau County
Commission Expires September 8, 2021